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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL T. PAILLE,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 18A02-0707-PC-582
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Marianne Vorhees, Judge
Cause No. 18C01-0512-FC-49

December 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Michael T. Paille appeals from the trial court's summary denial of his motion to modify his sentence, arguing that the trial court erroneously concluded that it lacked jurisdiction to rule on the motion.

On January 30, 2006, Paille pleaded guilty to class C felony operating a vehicle after a lifetime suspension. The plea agreement provided that Paille would also plead guilty to charges contained in two other cause numbers. On March 9, 2006, the trial court sentenced Paille to five years imprisonment, to be served consecutively to the sentences imposed in the other cause numbers. On January 9, 2007, Paille moved for the reduction or suspension of the five-year sentence. The State objected, and the trial court denied Paille's motion. On April 9, 2007, Paille filed a second motion to modify his sentence. The State objected and the trial court summarily denied the motion, finding that because the motion was filed more than 365 days after sentencing and the State objected, the trial court lacked jurisdiction. Paille now appeals.

Our Supreme Court has explicitly held that pursuant to Indiana Code section 35-38-1-17(b),¹ a trial court lacks jurisdiction to modify a defendant's sentence if more than 365 days have elapsed since the defendant began serving his sentence and the prosecutor does not approve the modification. State v. Fulkrod, 753 N.E.2d 630, 633 (Ind. 2001); see also Manley v. State, 868 N.E.2d 1175, 1179 (Ind. Ct. App. 2007) (holding that if 365 days have passed since the sentence was imposed and the prosecutor did not approve of the requested

¹ Indiana Code Section 35-38-1-17(b) provides, in relevant part, that "[i]f more than three hundred sixty-five (365) days have elapsed since the convicted person began serving the sentence and after a hearing at which the convicted person is present, the court may reduce or suspend the sentence, subject to the approval of the prosecuting attorney."

sentence modification, the trial court lacks authority to modify the sentence). Thus, because Paille filed his second motion to modify his sentence more than 365 days after he began serving his sentence and the prosecutor specifically objected to any modification or suspension of the sentence, the trial court properly concluded that it lacked jurisdiction to consider the motion.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.